IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1076 OF 2006

Shri Mohemmad Ismailjee Rajkotwala
and ors. ..Petitioners

Vs.

State of Maharashtra and anr. ..Respondents

Mr. S.R. Page for petitioner.
Mr. D.R. More, APP for State.
Mr. Uday Warunjikar for respondent no.2.

CORAM: B.H. MARLAPALLE, J.

Date : August 07, 2007.

P.C.:

1. Heard Mr. Page the learned counsel for the petitioners and Mr. Warunjikar the learned counsel for the respondent no.2. The learned APP appears for the State.

2. Th petitioner no.1 claims to be the power of attorney holder of Al-Madrasah Al-Saifiyah Al-Burhaniyah Trust and Amatullah Aailsaheba Memorial Trust, Mumbai. The dispute in this petition pertains to the two units of shops located in the camp area of Pune and on the complaint made by the respondent no.2,

the Sub Divisional Officer by exercising his powers under Section 145 of Cr.P.C. passed the impugned order 29/4/2005 and sealed both the shops. This order was challenged by the petitioners in Criminal Revision Application which also came to be dismissed as not maintainable.

3. Undoubtedly, the petitioner no.1 claims that he was in occupation of the suit shops pursuant to the Deed of Conveyance dated 22/9/2003 made by M/s. Chandanmal Construction Company through its Proprietor Shri Bhomaraj Chandanmal Porwal in favour of the Trust. The petitioner no.1 claims to be the power of attorney holder of the said Trust but has not explained as to how the Trust could be represented by him.

4. On the other hand, the respondent no.2 claims to be in possession of the suit shops right from 24/4/2000 on the basis of an agreement dated 29/5/1997 but which is not registered and the said agreement is between Chandan Builders, represented through its partner Shri Bhomaraj Chandanmal Porwal.

5. Mr. Page the learned counsel for the petitioners submitted that the petitioners' title is based on a registered conveyance dated 22/9/2003 and the petitioners continued to be in possession even when the complaint was filed with the SDO. On the other hand, Mr.Warunjikar submitted that the respondent no.2 has been in possession on 24/4/2000 and the investigation report submitted by the Cantonment Police Station at Pune on 27/4/2005 supports his contentions. He has also relied upon certain documents like the application for the telephone connection, the telephone bills, legal notice issued by the learned Advocate representing Bombay Samachar Nigam Ltd. (BSNL) and also the license under the Bombay Shops and Establishments Act issued on 22/6/2000 wherein the address is of the suit shops. Prima facie, the case of the respondent no.2 is supported from the documents referred to hereinabove as well as the investigation report dated 27/4/2005 regarding possession of the suit shops prior to filing of the complaint.

6. However, the issue of title as well as possession over the suit shops will have to be gone into in an appropriate civil proceedings and the impugned order has been passed more than two years ago and since then the shops are under seal.

7. I do not see any reason to cause interference in the impugned order on the face of the prima facie documentary evidence placed on record by the respondent no.2 and hence this petition fails.

8. The petition is hereby rejected summarily. If the application filed under Section 145 of Cr.P.C. is still pending, it is hereby directed that the same shall be heard and disposed off on its own merits as expeditiously as possible and preferably within a period of three months from the receipt of the writ after hearing all the parties concerned, including the Trust, M/s. Chandanmal Construction Company, Chandan Builders and undoubtedly without being influenced by any observations made in this order.

9. Writ to go forthwith.

(B.H. Marlapalle,J.)